

# Notice of Allowability

Application No.

09/927,995

Examiner

Shaojia A Jiang

Applicant(s)

REYES, JOE

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to June 29, 2004.
2. ☒ The allowed claim(s) is/are 21,36 and 37 (now renumbered 1,2,3).
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

SHAOJIA ANNA JIANG  
PATENT EXAMINER

7/19/04

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 30, 2004 has been entered.

Applicant's RCE, amendment and response to the Final Office Action (mailed December 16, 2003), filed March 30, 2004 have been entered, wherein claims 11 and 22-35 are cancelled, and claims 10, 18-21, and 36-37 have been amended.

Note that claims 1-9 and 12-17 have been cancelled previously as recorded in the previous Office Action December 16, 2003.

Applicant's supplemental amendment filed June 1, 2004 has been entered, wherein claims 10, 18-21, and 36-37 have been amended.

Applicant's supplemental amendment filed June 8, 2004 has been entered, wherein claims 10 and 18-20 are cancelled; claim 37 has been amended.

Applicant's supplemental amendment filed June 29, 2004 has been entered, wherein claim 37 has been amended.

Therefore, claims 1-20 and 22-35 are cancelled by Applicant's amendments as recorded above.

Currently, claims 21 and 36-37 are pending in this application.

As pointed out in the first Office Action on merits March 26, 2003, Applicant's claim for domestic priority to provisional application Serial No. 60/230, 656 under 35 U.S.C. 119(e) is acknowledged.

### ***Reasons For Allowance***

Claims 21 and 36-37 have been examined on the merits herein.

The claimed compositions consisting essentially of the particular active ingredients herein in specific effective amounts, are not deemed to be taught or fairly suggested by the prior art, as discussed below.

Applicant's amendment and supplemental amendments as recorded above (*supra*) reciting the claimed compositions, are seen to have the adequate support in the specification, i.e., the particular composition examples disclosed in the 2<sup>nd</sup> and 3<sup>rd</sup> paragraphs at page 12 of the specification. Thus, Applicant's amendments are not deemed to constitute any new matter.

Applicant's supplemental amendment submitted June 29, 2004, which cancels claims 10-11 and 18 have been considered and is sufficient to remove the rejection of claims 10-11 and 18 made under 35 U.S.C. 112 first paragraph for containing new subject matter of record in the prior Office Action dated December 16, 2003, as suggested by the examiner (see the interview summary). Therefore, the said rejection is withdrawn.

Applicant's supplemental amendment submitted June 29, 2004, which cancels claims 10-11 and 18 has been considered and is sufficient to remove the rejection of

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claims 10-11 and 18 made under 35 U.S.C. 112 first paragraph for lack of scope of enablement of record in the previous Office Action dated December 16, 2003, as suggested by the examiner (see the interview summary). Therefore, the said rejection is withdrawn.

Applicant's amendment submitted June 29, 2004, which cancels claims 10-11, 18, and 22-35, and limits the instant compositions in the pending claims 21 and 36-37 to those consisting essentially of the particular active ingredients herein with specific amounts herein has been considered and is sufficient to remove all prior art rejections made under 35 U.S.C. 102(b) and 35 U.S.C. 103(a) of record in the previous Office Action dated December 16, 2003, as suggested by the examiner (see the interview summary), because all cited prior art does not teach or fairly suggest a single composition consisting essentially of the all particular active ingredients herein with specific amounts herein.

Therefore, the rejections of claims 10-11 and 18 made under 35 U.S.C. 102(b) as being anticipated by the Chinese herbal composition "dzan yu dan" (A Handbook of Chinese Healing Herbs, page 243-244, and page 244-245, and page 246-247) of record in the previous Office Action December 16, 2003 are withdrawn; the rejection of claims 21-37 made under U.S.C. 103(a) as being unpatentable over Cherksey (5,516,516) and TriBex-500<sup>TM</sup> (1998) and ArginMax<sup>TM</sup> (1998) and DeLuca et al. (US 6,093,421) of record in the previous Office Action dated December 16, 2003 is withdrawn.

As discussed above, the claimed compositions are not deemed to be anticipated by or to be obvious over the prior art.

Therefore, Applicant's amendment filed June 29, 2004 is sufficient to remove all rejections made in the prior Office Action as discussed above and place the application in condition for allowance.

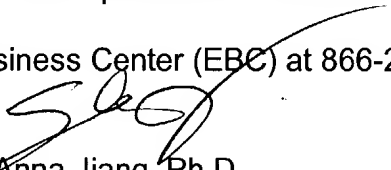
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner S. A Jiang whose telephone number is 571.272.0627. The examiner can normally be reached on 9 am -5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571.272.0629. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
S. Anna Jiang, Ph.D.  
Patent Examiner, AU 1617  
July 19, 2004

**SHAOJIA ANNA JIANG**  
**PATENT EXAMINER**